

AMENDED IN SENATE APRIL 7, 1997

SENATE BILL

No. 1328

Introduced by Senator Brulte

February 28, 1997

An act to amend Sections ~~1775 and 1776~~ of 1727, 1729, 1730, 1731, 1732, 1733, 1735, 1771.5, 1771.7, 1775, 1776, 1777.5, 1777.7, 1812, and 1813 of, and to add Section 1722.2 to, the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 1328, as amended, Brulte. Public works: prevailing wages: ~~penalties~~.

Existing law requires the body awarding a public works contract to withhold from payment otherwise due the contractor the amount of any wages and penalties forfeited pursuant to any stipulation in the contract and the terms of specified statutory provisions relating to public works contracts.

This bill would make an exception for wages or penalties owed by a subcontractor or an employer, as defined, if the contractor has paid the subcontractor or employer in full and retains no funds on behalf of the subcontractor or employer.

Existing law requires awarding bodies to transfer wages and penalties so withheld to the Labor Commissioner for prescribed disbursement if the contractor fails to bring suit for recovery thereof within a prescribed time.

This bill would instead require this transfer if the employer, as defined, fails to bring suit for recovery thereof. The bill would also delete existing provisions authorizing a public

works contractor, who has paid a subcontractor, to commence a civil action to recover from the subcontractor penalties or forfeitures withheld by the awarding body on account of certain violations of the subcontractor.

Existing law authorizes public works contractors to withhold payment to a subcontractor of an amount sufficient to cover penalties withheld by the awarding body on account of the subcontractor's failure to comply with specified requirements respecting public works contracts.

This bill would recast the above provisions to allow contractors to withhold these payments from defined employers.

Existing law prohibits specified discrimination in employment by contractors on public works projects and makes violation a misdemeanor.

This bill would impose a state-mandated local program by making this prohibition instead applicable to defined employers.

Existing law exempts certain public works contracts from the requirement for payment of the general prevailing rate of per diem wages if the awarding body elects to initiate and enforce a prescribed labor compliance program for every public works project under its authority. Under existing law, the contractor may appeal an enforcement action under a labor compliance program to the Director of Industrial Relations.

This bill would instead authorize defined employers to appeal these enforcement actions to the director.

Existing law requires, except for public works projects of \$1,000 or less, not less than the general prevailing rate of per diem wages to be paid to all workers employed on a public works project. Existing law imposes upon the contractor a penalty of \$50 for each calendar day, or portion thereof, for each worker paid less than that prevailing rate for work performed for the contractor under the public works contract or for work performed for any subcontractor under the contractor. Existing law also requires the contractor to pay the difference in the amount of the prevailing wage rate that was due each employee of the contractor or a subcontractor and the amount that was actually paid to each employee.

~~This bill would provide that, if a worker employed by a subcontractor on a public works project is not paid the prevailing wage by the subcontractor, the prime contractor of the project is not liable for any of those penalties or amounts otherwise due under that existing law unless the prime contractor had actual knowledge, as specified, of that failure of the subcontractor. The bill also would exempt a prime contractor from liability for any penalties or amounts otherwise due under that existing law based on the failure of the subcontractor to pay the general prevailing per diem wages to those workers if the prime contractor takes timely corrective action to halt or rectify that failure after the contractor becomes aware of that failure.~~

~~This bill further would require the Division of Labor Standards Enforcement in enforcing any judgment for penalties or amounts due under that existing law to first attempt to enforce the judgment against the contractor who was the direct employer of the workers that were not paid the general prevailing per diem wages prior to enforcing that judgment against any other contractor that was found liable for those penalties or amounts.~~

This bill would require an employer, as defined, that fails to pay the required prevailing rate of per diem wages under a public works contract to pay the penalty for failure to pay prevailing wage rates, and would exempt the contractor from payment of the penalty if the contractor meets certain requirements. The bill would make make the contractor liable for payment of the difference between prevailing wage rates and the wage rates actually paid to all employees on a public works project, but would require the Division of Labor Standards Enforcement to first seek payment from the employer, as defined, if other than the contractor. The bill would require public works contractors to withhold a sufficient amount from subcontractors in violation of prevailing-wage requirements and would make procedural changes in the enforcement proceedings of the division.

Existing law, with certain exceptions, requires each public works contractor and subcontractor to keep an accurate and certified payroll record, showing specified employment information for each employee employed by the contractor in

connection with the public work. Existing law requires each *public works* contractor and subcontractor to make those records available within 10 days upon receipt of a written request by certain entities. Existing law imposes, after the expiration of that 10 day period, a penalty of \$25 per calendar day for each day of noncompliance by the contractor.

~~This bill would provide that the maximum amount of penalty that may be imposed for noncompliance by a contractor with those requirements may not exceed 120 percent of the total wages paid to all of the workers during the period of noncompliance.~~

~~Existing law makes the prime contractor responsible for compliance with the above requirements.~~

~~The bill would repeal that designation of responsibility and instead would require the Division of Labor Standards Enforcement, in enforcing any judgment for penalties assessed under those provisions, to first attempt to enforce the judgment against the contractor who did not comply with those requirements prior to enforcing that judgment against any other contractor that was found liable for those penalties.~~

This bill would limit the obligation of the contractor to respond to requests of the public for inspection of a certified copy of payroll records, made through the awarding authority, Division of Apprenticeship Standards, or Division of Labor Standards Enforcement, to once per month. The bill would shift certain requirements concerning these records from the contractor to the employer, as defined. The bill would impose a state-mandated local program by requiring the body awarding a public works contract, including local agencies, to include certain enforcement provisions in their public works contracts.

Existing law specifies conditions upon which apprentices may be employed under public works contracts and requires public works contracts to make the prime contractor responsible for compliance and subject to prescribed civil penalties for noncompliance.

This bill would instead require public works contracts to make the employer, as defined, of an apprentice responsible for compliance and subject to the civil penalties for noncompliance.

Existing law requires contractors and subcontractors under public works contracts to keep records of hours worked by their employees on the contracted public works.

This bill would instead make this requirement applicable to employers, as defined, of employees employed in connection with public works.

Existing law makes contractors under public works contracts liable for prescribed civil penalties for violation of overtime work restrictions by the contractor or any subcontractor.

This bill would instead make an employer, as defined, who violates these overtime work restrictions liable for the penalties.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 1775 of the Labor Code is~~
- 2 *Section 1722.2 is added to the Labor Code, to read:*
- 3 *1722.2. For the purposes of this chapter, “employer”*
- 4 *means the person or entity or a licensee, officer, agent, or*
- 5 *representative thereof acting in that capacity, directly*
- 6 *responsible for employing a worker and for paying*
- 7 *applicable state and local payroll taxes with respect to the*

1 worker's employment on public works that is subject to
2 this article and Article 2 (commencing with Section
3 1770).

4 SEC. 2. Section 1727 of the Labor Code is amended to
5 read:

6 1727. Before making payments to the contractor of
7 money due under a contract for public work, the
8 awarding body shall withhold and retain therefrom all
9 wages and penalties which have been forfeited pursuant
10 to any stipulation in a contract for public work, and the
11 terms of this chapter. But no sum shall be withheld,
12 retained or forfeited, except from the final payment,
13 without a full investigation by either the Division of
14 Labor Standards Enforcement or by the awarding body.
15 *This section does not apply to wages and penalties owed*
16 *by a subcontractor or employer if the contractor has paid*
17 *the subcontractor or employer in full for the completion*
18 *of its work, and no longer retains money on behalf of the*
19 *subcontractor or employer.*

20 SEC. 3. Section 1729 of the Labor Code is amended to
21 read:

22 1729. It shall be lawful for any contractor to withhold
23 from any ~~subcontractor employer under him~~, working on
24 a public works project of that contractor, sufficient sums
25 to cover any penalties withheld from him or her by the
26 awarding body on account of the ~~subcontractor's~~
27 ~~employer's~~ failure to comply with the terms of this
28 chapter, ~~and if payment has already been made to the~~
29 ~~subcontractor the contractor may recover from him the~~
30 ~~amount of the penalty or forfeiture in a suit at law.~~

31 SEC. 4. Section 1730 of the Labor Code is amended to
32 read:

33 1730. Every awarding body shall transfer all wages
34 and penalties that have been withheld pursuant to
35 Section 1727 to the Labor Commissioner, for
36 disbursement pursuant to Section 1775, whenever a
37 ~~contractor~~ an employer fails to bring a suit against the
38 awarding body for recovery of wages and penalties that
39 are withheld pursuant to Section 1727 within 90 days after

1 the completion of the contract and formal acceptance of
2 the job.

3 *SEC. 5. Section 1731 of the Labor Code is amended to*
4 *read:*

5 1731. If suit is brought against the awarding body
6 within the 90-day period and formal notice thereof is
7 given to the awarding body within the 90-day period
8 either by service of summons or by registered mail which
9 is received within the 90-day period, the wages and
10 penalties shall be retained by the awarding body pending
11 the outcome of the suit, and be forwarded to the Labor
12 Commissioner for disbursement pursuant to Section 1775
13 if the ~~contractor~~ employer does not prevail in the action.
14 Wages for workers who cannot be located shall be placed
15 in the Industrial Relations Unpaid Wage Fund and held
16 in trust for the workers pursuant to Section 96.7. Penalties
17 shall be paid into the General Fund.

18 *SEC. 6. Section 1732 of the Labor Code is amended to*
19 *read:*

20 1732. Notwithstanding any other provision of law, the
21 time for action by the ~~contractor~~ employer or his or her
22 assignee for the recovery of wages or penalties is limited
23 to the 90-day period and suit on the contract for alleged
24 breach thereof in not making the payment is the
25 exclusive remedy of the ~~contractor~~ employer or his or her
26 assignees with reference to those wages or penalties.

27 *SEC. 7. Section 1733 of the Labor Code is amended to*
28 *read:*

29 1733. Suit may be brought by the ~~contractor~~
30 employer or his or her assignee without permission from
31 the state or other authority and is limited to the recovery
32 of the wages and penalties without prejudice to the
33 ~~contractor's~~ employer's or assignee's rights in regard to
34 other matters affecting the contract. No other issues shall
35 be presented to the court in the case and the burden shall
36 be on the ~~contractor~~ employer or his or her assignee to
37 establish his or her right to the wages or penalties
38 withheld. The Division of Labor Standards Enforcement
39 may intervene in any court proceeding brought pursuant
40 to this section. In case the action is not commenced and

1 actual notice thereof received by the awarding body
2 within the 90-day period, the action shall be dismissed on
3 motion of the awarding body or the Division of Labor
4 Standards Enforcement.

5 The Division of Labor Standards Enforcement may,
6 upon written request of any awarding body, assist in the
7 defense of the action.

8 *SEC. 8. Section 1735 of the Labor Code is amended to*
9 *read:*

10 1735. No discrimination shall be made in the
11 employment of persons upon public works because of the
12 race, religious creed, color, national origin, ancestry,
13 physical disability, mental disability, medical condition,
14 marital status, or sex of ~~such~~ those persons, except as
15 provided in Section 12940 of the Government Code, and
16 every ~~contractor~~ *for employer* on public works violating
17 this section is subject to all the penalties imposed for a
18 violation of this chapter.

19 *SEC. 9. Section 1771.5 of the Labor Code is amended*
20 *to read:*

21 1771.5. (a) ~~Notwithstanding~~ *Notwithstanding*
22 Section 1771, an awarding body shall not require the
23 payment of the general prevailing rate of per diem wages
24 or the general prevailing rate of per diem wages for
25 holiday and overtime work for any public works project
26 of twenty-five thousand dollars (\$25,000) or less when the
27 project is for construction work, or for any public works
28 project of fifteen thousand dollars (\$15,000) or less when
29 the project is for alteration, demolition, repair, or
30 maintenance work, if the awarding body elects to initiate
31 and enforce a labor compliance program pursuant to
32 subdivision (b) for every public works project under the
33 authority of the awarding body.

34 (b) For the purposes of this section, a labor compliance
35 program shall include, but not be limited to, the following
36 requirements:

37 (1) All bid invitations and public works contracts shall
38 contain appropriate language concerning the
39 requirements of this chapter.

(2) A prejob conference shall be conducted with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract.

(3) Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.

(4) The awarding body shall review, and, if appropriate, audit payroll records to verify compliance with this chapter.

(5) The awarding body shall withhold contract payments when payroll records are delinquent or inadequate, *in accordance with Section 1776*.

(6) The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred, *in accordance with Section 1727*.

SEC. 10. Section 1771.7 of the Labor Code is amended to read:

1771.7. ~~A contractor~~ An employer may appeal an enforcement action by a political subdivision pursuant to Section 1771.5 to the Director of Industrial Relations. Any ruling by the director shall be final and, notwithstanding Section 1732, any appeal shall waive the ~~contractor's~~ employer's right to bring court action on the same issue.

SEC. 11. Section 1775 of the Labor Code is amended to read:

1775. (a) The ~~contractor~~ employer shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the *general* prevailing ~~rates~~ *rate of per diem wages* as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by him or her or by any subcontractor under him or her. The amount of this penalty shall be determined by the Labor Commissioner and shall be based on consideration of the ~~contractor's~~ employer's mistake, inadvertence, or neglect in failing to

1 pay the correct rate of prevailing wages, or the previous
2 record of the ~~contractor~~ employer in meeting his or her
3 prevailing wage obligations, or a ~~contractor's~~ willful
4 failure *by the employer* to pay the correct rates of
5 prevailing wages. A mistake, inadvertence, or neglect in
6 failing to pay the correct rate of prevailing wages is not
7 excusable if the ~~contractor~~ employer had knowledge of
8 his or her obligations under this part. The difference
9 between the prevailing wage rates and the amount paid
10 to each worker for each calendar day or portion thereof
11 for which each worker was paid less than the prevailing
12 wage rate shall be paid to each worker by the ~~contractor~~
13 employer, and the body awarding the contract shall cause
14 to be inserted in the contract a stipulation that this section
15 will be complied with.

16 (b) (1) *If the employer fails to pay the general*
17 *prevailing rate of per diem wages due an employee, the*
18 *contractor, if not the employer, shall be liable for making*
19 *those prevailing wage rate payments.*

20 (2) *If a worker employed on a public works project is*
21 *not paid the general prevailing per diem wages by his or*
22 *her employer, the contractor of the project is not liable*
23 *for any penalties due under subdivision (a), provided all*
24 *of the following apply:*

25 (A) *The contractor has paid not less than the general*
26 *prevailing rate of per diem wages to all workers.*

27 (B) *The contractor has complied with Sections 1773.5,*
28 *1775, and 1777.5 regarding public works jobsites.*

29 (C) *The contractor has provided workers'*
30 *compensation coverage pursuant to Section 1861.*

31 (D) *The contractor has complied with Sections 1778*
32 *and 1779 regarding receiving a portion of wages or*
33 *acceptance of a fee.*

34 (E) *The contractor has maintained and made*
35 *available for inspection payroll records* ~~To the extent that~~
36 ~~there is insufficient money due a contractor to cover all~~
37 ~~penalties and amounts due in accordance with this~~
38 ~~section, or in accordance with Section 1776.~~

39 (F) *The contractor paid workers overtime pay in*
40 *accordance with Section 1815 or as provided in the*

1 *collective bargaining agreement adopted by the director*
2 *pursuant to regulations thereof.*

3 *(G) The contractor complied with the regulations of*
4 *the department respecting discrimination.*

5 *(H) The contractor is subject to the provisions of*
6 *Section 1777.7 that specify penalties imposed on a*
7 *contractor who willfully fails to comply with Section*
8 *1777.5.*

9 *(I) The contractor has complied with the*
10 *requirements of Sections 1810 and 1813.*

11 *(3) In enforcing any claim for general prevailing per*
12 *diem wages due under paragraph (1), the Division of*
13 *Labor Standards Enforcement first shall exhaust all legal*
14 *remedies to enforce the claim against the employer of the*
15 *workers that were not paid the general prevailing rate of*
16 *per diem wages prior to enforcing that claim against the*
17 *contractor. Within 15 days of the division receiving a*
18 *complaint of the failure of a subcontractor to pay workers*
19 *the general prevailing rate of per diem wages, the*
20 *division shall notify the contractor of that complaint.*
21 *Upon request from the division where a subcontractor's*
22 *underpayment of the general prevailing per diem wages*
23 *has been established, the contractor shall retain sufficient*
24 *monies due the subcontractor until the division notifies*
25 *the contractor that the wage complaint is resolved. If*
26 *notice of the resolution of the wage complaint has not*
27 *been received by the date of the filing of a valid notice of*
28 *completion or acceptance of the public work, whichever*
29 *later occurs, then the contractor shall transmit all those*
30 *retained monies to the awarding authority.*

31 *(c) To the extent that there is insufficient money due*
32 *an employer to cover all penalties and amounts due in*
33 *accordance with this section or Section 1813, and in all*
34 *cases where the contract does not provide for a money*
35 *payment by the awarding body to the contractor, the*
36 *awarding body shall notify the Division of Labor*
37 *Standards Enforcement of the violation and the Division*
38 *of Labor Standards Enforcement, and the division, if*
39 *necessary with the assistance of the awarding body, may*
40 *maintain an action in any court of competent jurisdiction*

1 to recover the penalties and the amounts due *as* provided
2 in this section. ~~This~~ *If the action is against a subcontractor,*
3 *the awarding body shall provide the notice to the*
4 *contractor in writing within 35 days from the filing of a*
5 *valid notice of completion. The action shall be*
6 commenced not later than 90 days after the filing of a
7 valid notice of completion in the office of the county
8 recorder in each county in which the public work or some
9 part thereof was performed, or not later than 90 days after
10 acceptance of the public work, whichever ~~last~~ *later*
11 occurs. *If the notice of completion is filed with the county*
12 *recorder more than 10 days after the acceptance of the*
13 *project, the 90 days shall commence to run from the date*
14 *of the acceptance. In the absence of acceptance by the*
15 *awarding body, the action shall be commenced not later*
16 *than 90 days after the physical completion of the project.*
17 No issue other than that of the liability of the ~~contractor~~
18 employer for the penalties allegedly forfeited and
19 amounts due shall be determined in the action, and the
20 burden shall be upon the ~~contractor~~ employer to establish
21 that the penalties and amounts demanded in the action
22 are not due.

23 Out of any money withheld, recovered, or both, there
24 shall first be paid the amount due each worker, and if
25 insufficient funds are withheld, recovered, or both, to pay
26 each worker in full, the money shall be prorated among
27 all workers.

28 *SEC. 12. Section 1776 of the Labor Code is amended*
29 *to read:*

30 1776. (a) Each contractor and subcontractor shall
31 keep ~~an~~ accurate payroll ~~record~~, *records* showing the
32 name, address, social security number, work
33 classification, and straight time and overtime hours
34 worked each day and week, and the actual per diem
35 wages paid to each journeyman, apprentice, worker, or
36 other employee employed ~~by him or her~~ in connection
37 with the public work.

38 (b) The payroll records enumerated under
39 subdivision (a) shall be certified and shall be available for

1 inspection at all reasonable hours at the principal office
2 of the contractor on the following basis:

3 (1) A certified copy of an a employee's payroll record
4 shall be made available for inspection or furnished to the
5 employee or his or her authorized representative on
6 request.

7 (2) A certified copy of all payroll records enumerated
8 in subdivision (a) shall be made available *upon request by*
9 *a member of the public* for inspection or furnished upon
10 request to a representative of the body awarding the
11 contract, the Division of Labor Standards Enforcement,
12 and the Division of Apprenticeship Standards of the
13 Department of Industrial Relations.

14 (3) A certified copy of all payroll records enumerated
15 in subdivision (a) shall be made available upon request by
16 the public for inspection or for copies thereof *not more*
17 *frequently than once in any calendar month*. However,
18 a request by the public shall be made through either the
19 body awarding the contract, the Division of
20 Apprenticeship Standards, or the Division of Labor
21 Standards Enforcement. If the requested payroll records
22 have not been provided pursuant to paragraph (2), the
23 requesting party shall, prior to being provided the
24 records, reimburse the costs of preparation by the
25 contractor, subcontractors, and the entity through which
26 the request was made. The public shall not be given
27 access to the records at the principal office of the
28 contractor.

29 (c) The certified payroll records shall be on forms
30 provided by the Division of Labor Standards
31 Enforcement or shall contain the same information as the
32 forms provided by the division.

33 (d) Each ~~contractor~~ *employer* shall file a certified
34 copy of the records enumerated in subdivision (a) with
35 the entity that requested the records within 10 days after
36 receipt of a written request.

37 (e) Any copy of records made available for inspection
38 as copies and furnished upon request to the public or any
39 public agency by the awarding body, the Division of
40 Apprenticeship Standards, or the Division of Labor

1 Standards Enforcement shall be marked or obliterated in
2 a manner so as to prevent disclosure of an individual's
3 name, address, and social security number. The name and
4 address of the contractor awarded the contract or
5 performing the contract shall not be marked or
6 obliterated.

7 (f) The ~~contractor~~ employer shall inform the body
8 awarding the contract of the location of the records
9 enumerated under subdivision (a), including the street
10 address, city and county, and shall, within five working
11 days, provide a notice of a change of location and address.

12 (g) The ~~contractor~~ employer shall have 10 days in
13 which to comply subsequent to receipt of written notice
14 specifying in what respects the ~~contractor must~~ employer
15 is required to comply with this section. In the event that
16 the ~~contractor~~ employer fails to comply within the 10-day
17 period, he or she shall, as a penalty to the state or political
18 subdivision on whose behalf the contract is made or
19 awarded, forfeit twenty-five dollars (\$25) for each
20 calendar day, or portion thereof, for each worker, until
21 strict compliance is effectuated. Upon the request of the
22 Division of Apprenticeship Standards or the Division of
23 Labor Standards Enforcement, these penalties shall be
24 withheld from progress payments then due.

25 (h) The body awarding the contract shall cause to be
26 inserted in the contract stipulations to effectuate this
27 section. These stipulations shall fix the responsibility for
28 compliance with this section on the ~~prime contractor~~
29 employer.

30 (i) The director shall adopt rules consistent with the
31 California Public Records Act, (Chapter 3.5
32 (commencing with Section 6250), Division 7, Title 1,
33 Government Code) and the Information Practices Act of
34 1977, (Title 1.8 (commencing with Section 1798), Part 4,
35 Division 3, Civil Code) governing the release of these
36 records, including the establishment of reasonable fees to
37 be charged for reproducing copies of records required by
38 this section.

39 SEC. 13. Section 1777.5 of the Labor Code is amended
40 to read:

1 1777.5. Nothing in this chapter ~~shall prevent~~ *prevents*
2 the employment of properly registered apprentices upon
3 public works.

4 ~~Every such apprentice~~

5 *Those apprentices* shall be paid the standard wage paid
6 to apprentices under the regulations of the craft or trade
7 at which he or she is employed, and shall be employed
8 only at the work of the craft or trade to which he or she
9 is registered.

10 Only apprentices, as defined in Section 3077, who are
11 in training under apprenticeship standards and written
12 apprentice agreements under Chapter 4 (commencing
13 with Section 3070) of Division 3, are eligible to be
14 employed on public works. The employment and training
15 of each apprentice shall be in accordance with the
16 apprenticeship standards and apprentice agreements
17 under which he or she is training.

18 When the contractor to whom the contract is awarded
19 by the state or any political subdivision, or any
20 subcontractor under him or her, in performing any of the
21 work under the contract or subcontract, employs workers
22 in any apprenticeable craft or trade, the contractor and
23 subcontractor shall apply to the joint apprenticeship
24 committee administering the apprenticeship standards
25 of the craft or trade in the area of the site of the public
26 work for a certificate approving the contractor or
27 subcontractor under the apprenticeship standards for the
28 employment and training of apprentices in the area or
29 industry affected. However, approval as established by
30 the joint apprenticeship committee or committees shall
31 be subject to the approval of the Administrator of
32 Apprenticeship. The joint apprenticeship committee or
33 committees, subsequent to approving the subject
34 contractor or subcontractor, shall arrange for the
35 dispatch of apprentices to the contractor or subcontractor
36 in order to comply with this section. Every contractor and
37 subcontractor shall submit contract award information to
38 the applicable joint apprenticeship committee which
39 shall include an estimate of journeyman hours to be
40 performed under the contract, the number of

1 apprentices to be employed, and the approximate dates
2 the apprentices will be employed. There shall be an
3 affirmative duty upon the joint apprenticeship
4 committee or committees administering the
5 apprenticeship standards of the craft or trade in the area
6 of the site of the public work to ensure equal employment
7 and affirmative action in apprenticeship for women and
8 minorities. Contractors or subcontractors shall not be
9 required to submit individual applications for approval to
10 local joint apprenticeship committees provided they are
11 already covered by the local apprenticeship standards.
12 The ratio of work performed by apprentices to
13 journeymen who shall be employed in the craft or trade
14 on the public work may be the ratio stipulated in the
15 apprenticeship standards under which the joint
16 apprenticeship committee operates, but, except as
17 otherwise provided in this section, in no case shall the
18 ratio be less than one hour of apprentices work for every
19 five hours of labor performed by a journeyman. However,
20 the minimum ratio for the land surveyor classification
21 shall not be less than one apprentice for each five
22 journeymen.

23 Any ratio shall apply during any day or portion of a day
24 when any journeyman, or the higher standard stipulated
25 by the joint apprenticeship committee, is employed at the
26 job site and shall be computed on the basis of the hours
27 worked during the day by journeymen so employed,
28 except for the land surveyor classification. The contractor
29 shall employ apprentices for the number of hours
30 computed as above before the end of the contract.
31 However, the contractor shall endeavor, to the greatest
32 extent possible, to employ apprentices during the same
33 time period that the journeymen in the same craft or
34 trade are employed at the job site. Where an hourly
35 apprenticeship ratio is not feasible for a particular craft or
36 trade, the Division of Apprenticeship Standards, upon
37 application of a joint apprenticeship committee, may
38 order a minimum ratio of not less than one apprentice for
39 each five journeymen in a craft or trade classification.

1 The contractor or subcontractor, if he or she is covered
2 by this section, upon the issuance of the approval
3 certificate, or if he or she has been previously approved
4 in the craft or trade, shall employ the number of
5 apprentices or the ratio of apprentices to journeymen
6 stipulated in the apprenticeship standards. Upon proper
7 showing by the contractor that he or she employs
8 apprentices in the craft or trade in the state on all of his
9 or her contracts on an annual average of not less than one
10 hour of apprentice work for every five hours of labor
11 performed by a journeyman, or in the land surveyor
12 classification, one apprentice for each five journeymen,
13 the Division of Apprenticeship Standards may grant a
14 certificate exempting the contractor from the 1-to-5
15 hourly ratio as set forth in this section. This section shall
16 not apply to contracts of general contractors or to
17 contracts of specialty contractors not bidding for work
18 through a general or prime contractor, when the
19 contracts of general contractors or those specialty
20 contractors involve less than thirty thousand dollars
21 (\$30,000) or 20 working days. Any work performed by a
22 journeyman in excess of eight hours per day or 40 hours
23 per week, shall not be used to calculate the hourly ratio
24 required by this section.

25 “Apprenticeable craft or trade,” as used in this section,
26 means a craft or trade determined as an apprenticeable
27 occupation in accordance with rules and regulations
28 prescribed by the Apprenticeship Council. The joint
29 apprenticeship committee shall have the discretion to
30 grant a certificate, which shall be subject to the approval
31 of the Administrator of Apprenticeship, exempting a
32 contractor from the 1-to-5 ratio set forth in this section
33 when it finds that any one of the following conditions is
34 met:

35 (a) Unemployment for the previous three-month
36 period in the area exceeds an average of 15 percent.

37 (b) The number of apprentices in training in such area
38 exceeds a ratio of 1 to 5.

39 (c) There is a showing that the apprenticeable craft or
40 trade is replacing at least one-thirtieth of its journeymen

1 annually through apprenticeship training, either on a
2 statewide basis, or on a local basis.

3 (d) Assignment of an apprentice to any work
4 performed under a public works contract would create a
5 condition which would jeopardize his or her life or the
6 life, safety, or property of fellow employees or the public
7 at large or if the specific task to which the apprentice is
8 to be assigned is of such a nature that training cannot be
9 provided by a journeyman.

10 When exemptions are granted to an organization
11 which represents contractors in a specific trade from the
12 1-to-5 ratio on a local or statewide basis the member
13 contractors will not be required to submit individual
14 applications for approval to local joint apprenticeship
15 committees, if they are already covered by the local
16 apprenticeship standards.

17 A contractor to whom the contract is awarded, or any
18 subcontractor under him or her, who, in performing any
19 of the work under the contract, employs journeymen or
20 apprentices in any apprenticeable craft or trade and who
21 is not contributing to a fund or funds to administer and
22 conduct the apprenticeship program in any craft or trade
23 in the area of the site of the public work, to which fund
24 or funds other contractors in the area of the site of the
25 public work are contributing, shall contribute to the fund
26 or funds in each craft or trade in which he or she employs
27 journeymen or apprentices on the public work in the
28 same amount or upon the same basis and in the same
29 manner as the other contractors do, but where the trust
30 fund administrators are unable to accept the funds,
31 contractors not signatory to the trust agreement shall pay
32 a like amount to the California Apprenticeship Council.
33 The contractor or subcontractor may add the amount of
34 the contributions in computing his or her bid for the
35 contract. The Division of Labor Standards Enforcement
36 is authorized to enforce the payment of the contributions
37 to the fund or funds as set forth in Section 227.

38 The body awarding the contract shall cause to be
39 inserted in the contract stipulations to effectuate this
40 section. The stipulations shall fix the responsibility of

1 compliance with this section *on the employer* for all
2 apprenticeable occupations ~~with the prime contractor~~
3 *employed by it*.

4 All decisions of the joint apprenticeship committee
5 under this section are subject to Section 3081.

6 *SEC. 14. Section 1777.7 of the Labor Code is amended*
7 *to read:*

8 1777.7. (a) In the event a contractor or subcontractor
9 willfully fails to comply with Section 1777.5, the Director
10 of Industrial Relations shall deny to the contractor or
11 subcontractor, both individually and in the name of the
12 business entity under which the contractor or
13 subcontractor is doing business, the right to bid on, or to
14 receive, any public works contract for a period of up to
15 one year for the first violation and for a period of up to
16 three years for the second and subsequent violations.
17 Each period of debarment shall run from the date the
18 determination of noncompliance by the Administrator of
19 Apprenticeship becomes an order of the California
20 Apprenticeship Council.

21 (b) ~~A contractor or subcontractor~~ *An employer* who
22 violates Section 1777.5 shall forfeit as a civil penalty the
23 sum of fifty dollars (\$50) for each calendar day of
24 noncompliance. Notwithstanding Section 1727, upon
25 receipt of a determination that a civil penalty has been
26 imposed, the awarding body shall withhold the amount of
27 the civil penalty from contract progress payments then
28 due or to become due.

29 (c) In lieu of the penalty provided for in subdivision
30 (a) or (b), the director may for a first time violation and
31 with the concurrence of the joint apprenticeship
32 committee, order the contractor or subcontractor to
33 provide apprentice employment equivalent to the work
34 hours that would have been provided for apprentices
35 during the period of noncompliance.

36 (d) Any funds withheld by the awarding body
37 pursuant to this section shall be deposited in the General
38 Fund if the awarding body is a state entity, or in the
39 equivalent fund of an awarding body if the awarding body
40 is an entity other than the state.

1 (e) The interpretation and enforcement of Section
2 1777.5 and this section shall be in accordance with the
3 rules and procedures of the California Apprenticeship
4 Council.

5 *SEC. 15. Section 1812 of the Labor Code is amended*
6 *to read:*

7 1812. Every ~~contractor and subcontractor~~ employer
8 shall keep an accurate record showing the name of and
9 actual hours worked each calendar day and each calendar
10 week by each worker employed by him or her in
11 connection with the public work. The record shall be kept
12 open at all reasonable hours to the inspection of the
13 awarding body and to the Division of Labor Standards
14 Enforcement.

15 *SEC. 16. Section 1813 of the Labor Code is amended*
16 *to read:*

17 1813. The ~~contractor~~ employer shall, as a penalty to
18 the ~~State~~ state or political subdivision on whose behalf the
19 contract is made or awarded, forfeit twenty-five dollars
20 (\$25) for each workman employed in the execution of the
21 contract by the ~~contractor or by any subcontractor~~
22 employer for each calendar day during which ~~such~~ that
23 workman is required or permitted to work more than 8
24 hours in any one calendar day and 40 hours in any one
25 calendar week in violation of the provisions of this article.
26 In awarding any contract for public work, the awarding
27 body shall cause to be inserted therein a stipulation to this
28 effect. The awarding body shall take cognizance of all
29 violations of this article committed in the course of the
30 execution of the contract, and shall report them to the
31 officer of the ~~State~~ state or political subdivision who is
32 authorized to pay the contractor money due him under
33 the contract.

34 *SEC. 17. No reimbursement is required by this act*
35 *pursuant to Section 6 of Article XIII B of the California*
36 *Constitution for certain costs that may be incurred by a*
37 *local agency or school district because in that regard this*
38 *act creates a new crime or infraction, eliminates a crime*
39 *or infraction, or changes the penalty for a crime or*
40 *infraction, within the meaning of Section 17556 of the*

1 *Government Code, or changes the definition of a crime*
2 *within the meaning of Section 6 of Article XIII B of the*
3 *California Constitution.*

4 *However, notwithstanding Section 17610 of the*
5 *Government Code, if the Commission on State Mandates*
6 *determines that this act contains other costs mandated by*
7 *the state, reimbursement to local agencies and school*
8 *districts for those costs shall be made pursuant to Part 7*
9 *(commencing with Section 17500) of Division 4 of Title*
10 *2 of the Government Code. If the statewide cost of the*
11 *claim for reimbursement does not exceed one million*
12 *dollars (\$1,000,000), reimbursement shall be made from*
13 *the State Mandates Claims Fund.*

14 *Notwithstanding Section 17580 of the Government*
15 *Code, unless otherwise specified, the provisions of this act*
16 *shall become operative on the same date that the act*
17 *takes effect pursuant to the California Constitution.*

18 ~~amended to read:~~

19 ~~1775. (a) The contractor shall, as a penalty to the~~
20 ~~state or political subdivision on whose behalf the contract~~
21 ~~is made or awarded, forfeit not more than fifty dollars~~
22 ~~(\$50) for each calendar day, or portion thereof, for each~~
23 ~~worker paid less than the prevailing wage rates as~~
24 ~~determined by the director for the work or craft in which~~
25 ~~the worker is employed for any public work done under~~
26 ~~the contract by him or her or by any subcontractor under~~
27 ~~him or her. The amount of this penalty shall be~~
28 ~~determined by the Labor Commissioner and shall be~~
29 ~~based on consideration of the mistake, inadvertence, or~~
30 ~~neglect of the contractor in failing to pay the correct rate~~
31 ~~of prevailing wages, or the previous record of the~~
32 ~~contractor in meeting his or her prevailing wage~~
33 ~~obligations, or a willful failure by the contractor to pay the~~
34 ~~correct rates of prevailing wages. A mistake,~~
35 ~~inadvertence, or neglect in failing to pay the correct rate~~
36 ~~of prevailing wages is not excusable if the contractor had~~
37 ~~knowledge of his or her obligations under this part. The~~
38 ~~difference between the prevailing wage rates and the~~
39 ~~amount paid to each worker for each calendar day or~~
40 ~~portion thereof for which each worker was paid less than~~

~~the prevailing wage rate shall be paid to each worker by the contractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.~~

~~(b) (1) If a worker employed by a subcontractor on a public works project is not paid the general prevailing per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties or amounts due under subdivision (a) unless the prime contractor had actual knowledge of that failure of the subcontractor. For purposes of this subdivision, a prime contractor is deemed to have had “actual knowledge” if the contractor was aware of the willful failure of the subcontractor to pay the general prevailing per diem wages to those workers. A prime contractor also is not liable for any penalties or amounts specified under subdivision (a) due to the failure of the subcontractor to pay the general prevailing per diem wages to those workers if the contractor takes timely corrective action to halt or rectify that failure after the prime contractor becomes aware of that failure.~~

~~(2) In enforcing any judgment for penalties or amounts due under subdivision (a), the Division of Labor Standards Enforcement first shall attempt to enforce the judgment against the contractor who was the direct employer of the workers that were not paid the general prevailing per diem wages prior to enforcing that judgment against any other contractor that was found liable for those penalties or amounts. Within 15 days of the commencement by the division of an investigation of the failure of a subcontractor to pay workers the general prevailing per diem wages, the division shall notify the prime contractor of those allegations.~~

~~(c) To the extent that there is insufficient money due a contractor to cover all penalties and amounts due in accordance with this section or Section 1813, and in all cases where the contract does not provide for a money payment by the awarding body to the contractor, the awarding body shall notify the Division of Labor Standards Enforcement of the violation and the division, if necessary with the assistance of the awarding body, may~~

1 ~~maintain an action in any court of competent jurisdiction~~
2 ~~to recover the penalties and the amounts due provided in~~
3 ~~this section. This action shall be commenced not later~~
4 ~~than 90 days after the filing of a valid notice of completion~~
5 ~~in the office of the county recorder in each county in~~
6 ~~which the public work or some part thereof was~~
7 ~~performed, or not later than 90 days after acceptance of~~
8 ~~the public work, whichever last occurs. No issue other~~
9 ~~than that of the liability of the contractor for the penalties~~
10 ~~allegedly forfeited and amounts due shall be determined~~
11 ~~in the action, and the burden shall be upon the contractor~~
12 ~~to establish that the penalties and amounts demanded in~~
13 ~~the action are not due.~~

14 ~~Out of any money withheld, recovered, or both, there~~
15 ~~shall first be paid the amount due each worker, and if~~
16 ~~insufficient funds are withheld, recovered, or both, to pay~~
17 ~~each worker in full, the money shall be prorated among~~
18 ~~all workers.~~

19 ~~SEC. 2. Section 1776 of the Labor Code is amended to~~
20 ~~read:~~

21 ~~1776. (a) Each contractor and subcontractor shall~~
22 ~~keep an accurate payroll record, showing the name,~~
23 ~~address, social security number, work classification, and~~
24 ~~straight time and overtime hours worked each day and~~
25 ~~week, and the actual per diem wages paid to each~~
26 ~~journeyman, apprentice, worker, or other employee~~
27 ~~employed by the contractor in connection with the public~~
28 ~~work.~~

29 ~~(b) The payroll records enumerated under~~
30 ~~subdivision (a) shall be certified and shall be available for~~
31 ~~inspection at all reasonable hours at the principal office~~
32 ~~of the contractor on the following basis:~~

33 ~~(1) A certified copy of an employee's payroll record~~
34 ~~shall be made available for inspection or furnished to the~~
35 ~~employee or his or her authorized representative on~~
36 ~~request.~~

37 ~~(2) A certified copy of all payroll records enumerated~~
38 ~~in subdivision (a) shall be made available for inspection~~
39 ~~or furnished upon request to a representative of the body~~
40 ~~awarding the contract, the Division of Labor Standards~~

~~Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.~~

~~(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.~~

~~(e) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.~~

~~(d) Each contractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.~~

~~(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in a manner so as to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or performing the contract shall not be marked or obliterated.~~

~~(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.~~

1 ~~(g) The contractor shall have 10 days in which to~~
2 ~~comply subsequent to receipt of written notice specifying~~
3 ~~in what respects the contractor must comply with this~~
4 ~~section. In the event that the contractor fails to comply~~
5 ~~within the 10-day period, he or she shall, as a penalty to~~
6 ~~the state or political subdivision on whose behalf the~~
7 ~~contract is made or awarded, forfeit twenty-five dollars~~
8 ~~(\$25) for each calendar day, or portion thereof, for each~~
9 ~~worker, until strict compliance is effectuated. The~~
10 ~~maximum amount forfeited may not exceed 120 percent~~
11 ~~of the total wages paid to all of those workers during the~~
12 ~~period of time in which the contractor was not in~~
13 ~~compliance with this section. Upon the request of the~~
14 ~~Division of Apprenticeship Standards or the Division of~~
15 ~~Labor Standards Enforcement, these penalties shall be~~
16 ~~withheld from progress payments then due.~~

17 ~~(h) In enforcing any judgment for penalties assessed~~
18 ~~under this section, the Division of Labor Standards~~
19 ~~Enforcement first shall attempt to enforce the judgment~~
20 ~~against the contractor who did not comply with this~~
21 ~~section prior to enforcing that judgment against any~~
22 ~~other contractor that was found liable for those penalties.~~

23 ~~(i) The director shall adopt rules consistent with the~~
24 ~~California Public Records Act, (Chapter 3.5~~
25 ~~(commencing with Section 6250), Division 7, Title 1,~~
26 ~~Government Code) and the Information Practices Act of~~
27 ~~1977, (Title 1.8 (commencing with Section 1798), Part 4,~~
28 ~~Division 3, Civil Code) governing the release of these~~
29 ~~records, including the establishment of reasonable fees to~~
30 ~~be charged for reproducing copies of records required by~~
31 ~~this section.~~